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RUEHPE/AMEMBASSY LIMA 2814
RUEHCV/AMEMBASSY CARACAS 3098
RUEHQT/AMEMBASSY QUITO 1702
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RUEHBO/AMEMBASSY BOGOTA 3583
RUEHBU/AMEMBASSY BUENOS AIRES 3728
RUEAUSA/DEPT OF HHS WASHDC
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STATE FOR EB/TRA/OTP - BMATTINGLEY
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HOMELAND SECURITY PASS TO TSA VICKI REEDER
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TAGS: [EAIR](#) [ECON](#) [BR](#)
SUBJECT: BRAZIL - NEW CIVIL AVIATION AGENCY

REFS: (A) 05 RIO 792, (B) 05 BRASILIA 447, (C) 05 BRASILIA 2452

¶1. (U) Summary. A September 2005 law in Brazil created the National Civil Aviation Agency (ANAC), a civilian regulatory body that will replace the current Department of Civil Aviation (DAC) in the Ministry of Defense by March 2006. ANAC's mission is to regulate and monitor civil aviation as well as airline and airport infrastructure. While the GOB, airline industry and analysts all view the new civil aviation body positively, ANAC will not substantively change Brazilian aviation policy since it must regulate under the same aviation code. Nevertheless, Mission Brazil and our GOB interlocutors see this as an opportune moment for increased dialogue. End Summary.

¶2. (U) Following more than five years of discussion and speculation, on September 27, 2005, Law 11.182 created the National Civil Aviation Agency (ANAC), a civilian regulatory body that will replace the current Department of Civil Aviation (DAC) in the Ministry of Defense. ANAC is to be officially established within 180 days of the passage of the law (by March 21, 2006). ANAC's mission is to regulate and monitor civil aviation as well as airline and airport security and infrastructure, while air space security and traffic control will remain under the Air Force. As a civilian body, ANAC is also intended to create a more favorable investment climate and promote more market-based competition.

Background

¶3. (SBU) Considered by GOB to fall within the purview of national security, civil aviation has always been under the control of the Ministry of Defense. However, since the Brazilian government consolidated its military under a civilian Ministry of Defense almost 7 years ago, the idea of replacing the DAC, which is subordinate to the Brazilian Air Force, with a civilian agency has

gained momentum. Although the main resistance to ANAC came from the Air Force, one of the main proponents lobbying for the creation of ANAC was the (civilian) Ministry of Defense (MoD) itself. In the works since the end of the Fernando Henrique Cardoso administration, ANAC failed to gain traction in the Brazilian national congress until September of 2005. The creation of ANAC is in line with the Lula administration's continued efforts to reform and harmonize its regulatory bodies (Ref B).

Directors Selected

14. (U) Three of the four directors and the president (also a director) have been selected from diverse aviation-related backgrounds. The Director-President will be Milton Sergio Silveira Zuanazzi (current Secretary for Tourism at the Ministry of Tourism and a confidant of President Lula's Chief of Staff Dilma Rousseff). The Directors will be Leur Antonio Britto Lomanto (current congressional relations chief at the Brazilian aviation infrastructure body Infraero, former PMDB-BA federal deputy, and rapporteur on the original ANAC bill), Jorge Luiz Brito Velozo (Air Force colonel and current head of the DAC's technical-operational department), and Denise Maria Ayres de Abreu (a Sao Paulo lawyer and professor with ties to former Chief of Staff Jose Dirceu, and who reportedly supported an earlier plan to liquidate Varig under the previous Minister of Defense). It is anticipated that the fourth director position will be given to a union representative. The law grants the ANAC directors a 5 year mandate, but the first directors will have only 5, 4, 3 and 2 year mandates to stagger future turn-over.

HQ in Brasilia, but Ops in Rio

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15. (SBU) One of the final hiccups in the passage of the ANAC legislation was determining whether it would be based in Brasilia or would remain in Rio de Janeiro. Rigobert Lucht in the MoD Civil Aviation Department (and one of the main MoD lobbyists for creating ANAC) told Brasilia EconOff that a compromise was brokered: a small ANAC headquarters will be in Brasilia, but the majority of the operational staff will remain in Rio. The same arrangement exists with the National Petroleum Agency (ANP) and the Energy Research Institute (EPE). (Note: Lucht was in the US Air Force for 8 years, but then returned to Brazil and initially worked for Embraer. End Note.)

Gradual Personnel Turn-over

16. (SBU) The law allows for a 5 year transition period during which 20% of the current DAC staff per year will be replaced by ANAC staff. There is an informal consensus, however, that the Lula administration will likely allow for a longer period of transition. Director General of the DAC Jorge Godinho Barreto Nery estimated to Rio EconOff that half of the DAC are military personnel while Lucht estimated that DAC personnel are currently about 30% military personnel and 70% civilian. Senate advisor Victor Carvalho Pinto estimated to Brasilia EconOff that of the 2,200 current employees, as many as 1/3 are currently on temporary contracts. As previously reported, similar to the other regulatory agencies (Ref B), ANAC will benefit from greater stability under its new personnel system. ANAC will no longer be run by civilians under temporary contracts nor by military personnel who are only in the DAC on rotational assignments. Instead, aviation regulation will become a new professional field in Brazil and Pinto expects an enthusiastic response by the public to the position openings.

Funding its Budget

17. (SBU) ANAC will be funded through the general federal budget and a portion of Infraero's boarding fees. Although there were some press reports that ANAC did not have a budget, our interlocutors do not share these concerns at this time. Assistant Deputy Chief of

Staff in the President's Office, Rodrigo Augusto Rodrigues, told Brasilia EconOff that first, an amendment will be made to the general budget, transferring some of the DAC allotment to ANAC; second, up to 50% of the boarding fee that Infraero charges, as determined by the Executive branch, will be passed to ANAC. Rodrigues noted that Infraero is doing well financially and is the only aviation sector concessionaire that was not already paying something into the treasury for its concession. It is not clear at this point what impact these new procedures may have on airport fees.

Regulation vs. Code

18. (SBU) The creation of ANAC itself deliberately doesn't change anything in terms of the regulatory environment as ANAC will still regulate under the current Brazilian Civil Aviation Code (7.565 from December 1986). During the debate on the ANAC bill in the congress, a number of regulatory changes to were added to the measure (including an extension of current airline industry concessions). However, as part of the compromise to get the law passed, President Lula agreed to veto the regulatory elements to keep the law focused on the creation of the regulatory agency. A revised version of the code itself was drafted three years ago, but was placed on hold pending the creation of ANAC. When sent by the Lula Administration

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to congress, it is expected to address issues such as the percentage of ownership allowed by foreigners -- which is currently limited in Brazil to 20% -- and the tariff rates. Rodrigues expects a serious discussion of the current civil aviation law to begin soon. He explained that the new proposal will undergo a consultative process that will include the National Civil Aviation Counsel, with both the government and private sector represented. Rodrigues also expects that it will be easier to make changes to the law with a civilian regulatory body in place, as this entity will have a better sense of the market. The creation of ANAC may be the most significant civil aviation change since the considerable deregulation of the air transportation sector in Brazil in 2001.

19. (SBU) Lucht considered the creation of ANAC a symbolic victory for those who wish to assert greater civilian control over the Ministry of Defense. Pinto opined that as civil aviation was a civilian activity, that it belonged in civilian hands. The only down-side Pinto noted was that ANAC could be politicized rather than being run as a technical organization.

Comment

110. (SBU) With so many things broken in Brazil, there is some irony that the civil aviation regulatory body has undergone reform -- since the DAC has an excellent track record for meeting international aviation standards and is reportedly one of the eleven countries in International Civil Aviation Organization (ICAO) with the highest ranking in terms of aviation security. Nevertheless, we see this as a very positive step over the long-term and an opportunity for increased dialogue with the GOB on civil aviation. The DAC has consistently requested increased training and exchanges with the Transportation Security Administration (TSA), especially following our agreement on a reciprocal visits program (Ref C). Pinto said he is studying the US regulatory system and considers this an important moment to increase the US-Brazil dialogue and cooperation on civil aviation. Rodrigues, who was already familiar with OMB studies on the US system, also expressed great interest in having an exchange of best practices and lessons learned with US officials and private sector representatives as the GOB debates changes to its aviation law. Should the GOB end up formally requesting our counsel, we recommend that USG agencies take these overtures seriously and offer our assistance. Over the medium term, this may create an environment conducive to greater air transport liberalization and increased aviation security cooperation.

111. (U) This cable was written in coordination with Consulates General Sao Paulo and Rio de Janeiro.

